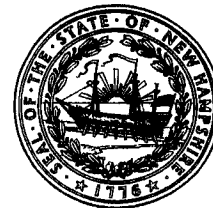




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Andrew Pysz
415 East Mountain Road
Newport, NH 03773

Re: East Washington Road, Hillsborough
Hillsborough Tax Map 1, Lots 6&8

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-013**

April 14, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Andrew Pysz, pursuant to RSA 482-A and NH Admin. Rule Env-C 614. The Division is proposing that fines totaling \$10,500 be imposed against Andrew Pysz for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Andrew Pysz is an individual having a mailing address of 415 East Mountain Road, Newport, NH 03773.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation of violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. The Russell Family Trust is believed to be the owner of property located on East Washington Road in Hillsborough, New Hampshire, more particularly described as Lots 6 & 8 on Hillsborough Tax Map 1 (the "Property").
4. On December 2, 2005 a Department of Revenue Notice of Intent to Cut Wood or Timber was

filed with the Town of Hillsborough. Andy Pysz was listed as the logger responsible for cutting.

5. On January 6, 2006, DES received a Notification of Forest Management Activities Having Minimum Wetlands Impact (the "Notification") for proposed forestry activities on the Property.

6. The Notification identified Mr. Pysz as the logger for the forestry operations to be performed on the Property.

7. Admin. Rule Wt. 304.05(b) states that "all skid trails, truck roads and log landings shall be laid out using appropriate erosion control devices, as outlined in the Best Management Practices for Erosion Control on Timber Operations in New Hampshire, so that the grade approaching a stream or pond is broken and surface water dispersed.

8. Admin. Rule Wt. 304.05(c) states that "Culverts, bridges, pole fords or other crossings shall be installed on skid trails and temporary crossings in accordance with procedures as outlined in the Best Management Practices for Erosion Control on Timber Operations in New Hampshire (BMPs").

9. On January 13, 2006, DES received a complaint from NH Forests and Lands that violations of forestry BMPs and un-permitted crossings had occurred. Photos submitted with the complaint showed that a pole ford was incorrectly installed to cross a perennial stream and that construction of a skid trail had resulted in large scale rutting of a wetland. The complaint was assigned Wetlands Bureau Complaint File # 2006-0035.

10. On January 16, 2006, DES personnel conducted a site inspection of the Property and observed the following:

- a. Approximately 80 linear feet of perennial stream bank had been rutted by machinery and disturbed as the result of the improper installation of the pole ford crossing. This crossing was indicated as Crossing #1 on the Notification;
- b. The approaches to Beard Brook at this crossing were not stabilized, resulting in rutting, collapsing stream banks and erosion of exposed soil in to the stream. No erosion controls were installed at the crossing;
- c. Approximately 125 linear feet of an intermittent stream channel had been rutted and skidded through. The skid trail was constructed across the stream channel and no crossing devices were installed. The adjacent wetland was also rutted as a result of use as a skid trail. Sediment deposition on the snow indicated that erosion of the exposed soils had occurred and flowed directly into Beard Brook. No erosion and/or turbidity controls were installed;
- d. A skid trail measuring approximately 450 feet long and 40 – 70 feet wide was constructed and located partially in a wetland. The skid trail had rutted approximately 20,000 square feet of the wetland. No erosion controls were installed;
- e. The skid trail crossing of the wetland exceeded 20 feet in width and 50 feet in length, in contradiction to and in excess of the Notification.

- f. No erosion controls or BMPs were installed on the skid trail and evidence of large scale erosion and sediment deposition leading in a path to the stream and adjacent wetland was observed;
 - g. A skid trail intercepted an intermittent stream and diverted the flow down the skid trail. The skid trail paralleled a stone wall at this location and was constructed in a wetland. It measured approximately 200 feet in length and approximately 30 feet in width, resulting in approximately 6,000 square feet of rutting; and
 - h. Approximately 200 square feet of rutting occurred at a crossing (specifically on Lot 8). No crossing device was installed at this crossing, in contradiction with the Notification. This crossing was indicated as Crossing #2 on the Notification.
11. On January 19, 2006, DES personnel contacted Mr. Pysz by telephone. Mr. Pysz agreed to cease logging activities on the Property and install temporary erosion control measures by hand along the skid trail and Beard Brook. The ruts on Crossing #2 would also be smoothed out by hand and the area stabilized by spreading hay mulch and installing erosion controls downstream of the crossing.
12. On February 9, 2006, DES received a letter from Mr. Pysz indicating that temporary erosion controls were installed near the Beard Brook crossing (indicated as Crossing #1 on the Notification). Mr. Pysz also indicated that he would not continue logging on the Property until the summer.
13. Mr. Pysz has been the subject of previous DES compliance action (under Wetlands Bureau file #1999-563 and file #2000-424) for unauthorized timber harvesting activities in wetlands and BMP violations; and is presently paying administrative fines for the associated violations.
14. Between 1999 and 2004, the Department of Resources and Economic Development's Division of Forest and Lands has issued multiple warnings, administrative summons, and orders to cease and desist for violations of RSA 482-A to Mr. Pysz for various properties throughout the state.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

- 1. Andrew Pysz has violated RSA 482-A:3, I, by dredging approximately 80 linear feet of perennial stream channel (Beard Brook) in excess of and in contradiction to the Notification. For this violation, Env-C 614.03(c) specifies a fine of \$1,000.
- 2. Andrew Pysz has violated RSA 482-A:3, I, by dredging and filling approximately 125 linear feet of intermittent stream channel without a permit from DES. For this violation, Env-C 614.04(c) specifies a fine of \$1,500.
- 3. Andrew Pysz has violated RSA 482-A:3, I, by dredging a minimum of 20,000 square feet of wetland by skidding through wetlands without a permit from DES. For this violation, Env-C 614.05(a) specifies a fine of \$2,000.
- 4. Andrew Pysz has violated NH Admin. Rules Wt 304.05(b) and (c) by failing to comply with

timber harvesting best management practices, specifically by:

- a. Failing to install suitable crossing devices at stream and wetland crossings;
- b. Using pole fords at high flow; and
- c. Failing to use water bars and appropriate erosion controls on skid trails;

For these violations, Env-C 614.06(f) specifies a fine of \$2,000 per violation, or a fine of \$6,000 for the three violations alleged.

The total fine being sought is \$10,500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Andrew Pysz is required to respond to this notice. Please respond no later than May 19, 2006 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

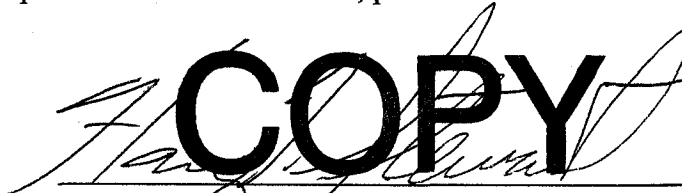
* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Dawn Buker, DES Wetlands Bureau
cc: Gretchen Hamel, Legal Unit Administrator
Town of Hillsborough Conservation Commission
Neil Bilodeau, NH DRED, Division of Forest and Lands
James M. Hawkins, Esq.

***** RETURN THIS PAGE ONLY *****

**ANDREW PYSZ IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN May 19, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Andrew Pysz:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Andrew Pysz:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$10,500 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature _____ Date _____

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:
DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.